

## **REMARKS**

Claims 1-47 were presented in this application prior to this response. Claims 4 and 33-47 have been cancelled. Claims 1, 3, 5-8, 11-12, and 14-18 have been amended herein. Claims 1-3, 5-32 are pending. Reconsideration of the amended claims is hereby requested.

The claims have been amended in response to the points raised on pages 1-4 of the official action. In light of these amendments, the application is asserted to be compliant with 35 USC 112. Withdrawal of the objections and rejections expressed on pages 1-4 is requested.

Claims 1-3, 20-24 and 26-32 have been rejected as anticipated under 102(b) by US 3,272,391 to Meshberg. Claim 1 has been amended to include the limitations of prior claim 4 (to which no 102 rejection was made). Meshberg does not disclose each and every element of amended claim 1, and is therefore claim 1 is novel over Meshberg. As all other claims depend from claim 1, they are therefore also novel over Meshberg.

Applicant notes that the teachings of Meshberg have been misinterpreted in many instances. For example, such misinterpretations include may not be limited to the assertion that Meshberg discloses the elements of claim 27-32. In fact the cited portions of Meshberg do not disclose the specific features of the claims.

Applicant's failure to address individual rejection of individual dependent claims should not be taken as acquiescence on the merits of the points raised by the examiner for what Meshberg, or the other references, teach. Applicant hasn't responded to these points, as this discussion is unnecessary, as Meshberg does not render claim 1 anticipated. As a matter of course, claims dependent thereon are not anticipated for this same reason.

Applicant specifically reserves the ability to address individual points as the need may arise in the future. Failure to do so herein should not be viewed as an

admission of what Meshberg, or any of the other references cited herein, legitimately teaches.

Claims 37 and 47 have been rejected as anticipated by US 6,568,389 to Rand. This rejection is rendered moot in light of the cancellation of those claims.

Claims 4-5 and 8 have been rejected as obvious over Meshberg, and further in view of Rand. The Examiner's objection to claim 4 (i.e. Amended claim 1) is that it is obvious over Meshberg in combination with Rand. Applicant respectfully traverses this rejection.

The Examiner provides no well-founded reason as to why the skilled person in the art would wish to modify the arrangement disclosed in Meshberg, where twin levers 25 are pivoted inwardly to act in lifting fashion on a collar fixed to an aerosol container 11, so that the aerosol container is lifted up relative to a valve stem 14 to open the valve (not shown) for release of content from the container (Meshberg, Figs 4 and 5). Yet, this begs the question, "What is wrong with the Meshberg arrangement that would lead the person of ordinary skill in the art to wish to modify it?

The Examiner's reasoning for motivation in the paragraph bridging pages 17 and 18 would appear to have been made with knowledge of the claimed invention. That is, Rand is firstly identified as allegedly containing the elements of claim 4 missing from Meshberg and then a reason is found to combine this teaching with Meshberg.

Even if, solely for argument's sake, Meshberg and Rand were combined, which is denied, the Examiner has provided no reasoning why the person of ordinary skill in the art would simply take the teeth from Rand and apply them to the levers 25 and collar 17 in Meshberg. This merely cherry-picks the content of Rand. Rather, the skilled person would adopt the mechanism disclosed in Rand and use that in Meshberg. The result would then be the inclusion of the drive arrangement shown in Figs 1a and 1b of Rand in the device of Meshberg. Such a combination would not satisfy the requirements of amended claim 1. In particular, amended claim 1 requires the toothed portion of the lever to engage a toothed rack attached to the container.

However, in Rand the lever 76 does not engage such a toothed rack, but a wheel 72 which in turn engages a toothed rack 70. Thus, the combination would not result in the claimed structure in any event.

Concerning the examiner's rejection of Claims 6-7 and 9-17 over Meshberg in view of Rand, further in view of US 6,527,144 to Ritsche et al., applicant's respectfully traverse the examiner's finding that the claimed invention would have been obvious over the teachings of these references.

In this rejection, Ritsche is further applied to Meshberg and Rand in respect of e.g. Claim 5, which depends on claim 4 (points 31 and 32). The Examiner refers to the embodiment of Ritsche shown in Fig. 6. In this embodiment, the rack 49 is comprised in the pump stem, whereby when the actuating elements 24 are moved, they cause the toothed washers 50 to drive the toothed pump stem downwardly (as viewed) relative to the container 12. This is confirmed by the passage in Ritsche at column 10 which states "[t]his embodiment makes it possible for the complete media container to be fixed in the casing 13" (emphasis added). In amended claim 1, however, the toothed rack is attached to the container and the toothed lever engages with the rack such as to move the container, specifically towards the nozzle.

Thus, the Ritsche reference teaches away from what is claimed whereby even if it were combined with Meshberg and Rand, it would not result in the claimed invention. In light of this, it is respectfully asserted that the rejection of claims 6, 7 and 9-17 is in error and it is requested that the rejection be withdrawn.

Claims 18 and 19 have been rejected as obvious over Meshberg as modified by Ritsche and further in view of DE 19610456 to Fuchs. Yet, as explained above, the combination of Meshberg and Ritsche does not support the rejection of claims 16. Further combination with Fuchs would not remedy this position. In short, there is no basis upon which to further modify this combination.

The examiner rejects claim 25 as obvious in light of Meshberg in view of Fuchs. Meshberg operates on sloped cams exerting force to drive a pump into a nozzle (see Figs 1-3 of Meshberg). Fuchs operates by exerting an upward force

created by a lever arm operating directly on surface of the can. (Figs 1-6). Neither meet the limitation of claim 1, “wherein the at least one lever has a toothed portion for engagement with a toothed rack attached to the container so as to form a driveable connection therebetween” and therefore a *prima facie* case of obviousness has been established with relation to the claim.

In light of the cancellation of claims 33-47, the remaining rejections are moot.

It is respectfully submitted that the present application is in condition for allowance. An early consideration and Notice of Allowance are earnestly solicited.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge any fees or credit any overpayment, particularly including any fees required under 37 CFR Sect 1.16 or 1.17, and any necessary extension of time fees, to deposit Account No. 07-1392.

Respectfully submitted:

**September 12, 2008**

Dated: \_\_\_\_\_

**/James P. Riek/**

By: \_\_\_\_\_

James P. RIEK  
Attorney of Record  
Reg. No. 39,009  
Tel. (919) 483-8022  
Fax: (919) 483-7988